

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner is a twenty-eight-year-old man who suffered severe injuries in a car accident several years ago. He and his eleven-year-old daughter live in a separate space in his parents' home. The petitioner's mother is his personal care attendant. The petitioner has a left-leg prosthesis and suffers from obesity. He has an adapted van and works part time. He is easily fatigued and has memory and concentration difficulties. Otherwise, he is mostly independent.

2. Last year the petitioner was approved for and received a total of 5 hours a week of attendant care services. In March 2005 the Department conducted an assessment of the petitioner's ongoing need for attendant care services. Based on the written assessment by a registered nurse who visited the petitioner's home and interviewed him and other family members, the Department found the petitioner had need for only 2½ hours a week of services.

3. The Department made its determination on the basis of a written "Independent Living Assessment" conducted by its nurse/assessor, in which scores are assigned based on an individual's health and functional needs. The biggest reductions in hours for the petitioner occurred in the areas of meal preparation, child care, and transportation.

4. At a hearing held on July 14, 2005 the petitioner admitted that he could now cook for himself and his daughter, and that he did not disagree with the Department's assessment that he did not need assistance in that regard.

5. For child care and transportation, the petitioner stated that his biggest problem is getting rides for his daughter to and from her after-school sports and activities because of conflicts with his work schedule. The petitioner

also stated that he suffers leg spasms on long drives and usually relies on his mother to drive him to medical appointments, many of which are located at a considerable distance from his home.

6. The Department maintains that its policies do not contemplate the use of attendant care for "child care" to provide transportation to extra-curricular school activities, the need for which is similar to any working parents and which are entirely unrelated to the petitioner's medical condition.

7. As for services for "transportation", the Department maintains that these too are limited by its policy to rides necessary for the petitioner and other family members due to the petitioner's medical problems, not his employment. The Department maintains that transportation services are available under Medicaid if the petitioner needs rides to medical appointments or must reimburse his mother for her time and expenses if her services are essential in this regard.

8. Inasmuch as the petitioner presented no medical evidence to counter the professional assessment of his medical needs and functions made by the Department's nurse/assessor, it is found that the hours of personal care

services awarded to him by the Department are based on a fair and accurate assessment of his medical condition and personal circumstances.¹

ORDER

The Department's decision is affirmed.

REASONS

The Department is directed by statute to provide attendant care services to "assist eligible individuals gain or retain their independence". 33 V.S.A. § 6321(b). Pursuant to its authority to create and administer rules to implement the program (*Id.* § 6321[d]) the Department has created a professionally administered and uniformly applied "Independent Living Assessment" form to evaluate an individual's need for attendant care services. In this case, there is no showing that the Department incorrectly evaluated the petitioner's medical and functional needs based on his medical condition. There is also no showing that the

¹ Following the hearing other family members submitted written statements which raised questions about the petitioner's additional need for help managing his money. However, inasmuch as these allegations raise questions in the Department's mind about the petitioner's overall eligibility for the program, and were not raised by the petitioner before or during the hearing, they will not be addressed herein. If the petitioner wants further consideration by the Department of his need for services in this regard he is free to make a separate request for them.

Department did not follow its policies and statutory directives in assessing the petitioner's needs and allocating a corresponding amount of attendant care services to meet those needs.

The petitioner appears to have additional needs for transportation based on his daughter's school activities and his own work schedule. However, he has not shown that these needs are related to his medical condition and that they are intended to be addressed by the Department's attendant care services program. The petitioner does not claim, nor does it appear, that the reduction in attendant care service hours threatens his ability to live independently. The petitioner has also not demonstrated that his claimed needs for transportation to medical appointments would not be covered under Medicaid.

Inasmuch as the Department appears to have followed applicable law and policy in assessing the petitioner's needs for attendant care services, the Board is bound to affirm its decision regarding the amount of service hours awarded to the petitioner under that program. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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